

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

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BROADCAST MUSIC, INC.; DEL SOUND  
MUSIC; MJ PUBLISHING TRUST d/b/a  
MIJAC MUSIC; RIO BRAVO MUSIC, INC.;  
SONY/ATV SONGS LLC d/b/a SONY/ATV  
TREE PUBLISHING; BIG YELLOW DOG,  
LLC d/b/a BIG YELLOW DOG MUSIC;  
TOKECO TUNES; WARNER-AMERLANE  
PUBLISHING CORP.; BIG BORASSA  
MUSIC LLC; EMI BLACKWOOD MUSIC  
INC.; INDIANA ANGEL MUSIC,

CASE NO. 8:17-cv-70

Plaintiffs,

**COMPLAINT**

v.

HILBURN ENTERPRISES, INC. d/b/a  
BOURBON JACK'S HONKYTONK BAR;  
and JACK HILBURN a/k/a JACKIE H.  
HILBURN, individually,

Defendants.

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Plaintiffs, by their attorneys, for their Complaint against Defendants, allege as follows (on knowledge as to Plaintiffs; otherwise on information and belief):

**JURISDICTION AND VENUE**

1. This is a suit for copyright infringement under the United States Copyright Act of 1976, as amended, 17 U.S.C. Sections 101 et seq. (the "Copyright Act"). This Court has jurisdiction pursuant to 28 U.S.C. Section 1338(a).

2. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1400(a).

## **THE PARTIES**

3. Plaintiff Broadcast Music, Inc. (“BMI”), is a corporation organized and existing under the laws of the State of New York. BMI’s principal place of business is 7 World Trade Center, 250 Greenwich Street, New York, New York 10007. BMI has been granted the right to license the public performance rights in approximately 10.5 million copyrighted musical compositions (the “BMI Repertoire”), including those which are alleged herein to have been infringed.

4. The Plaintiffs other than BMI are the owners of the copyrights in the musical compositions, which are the subject of this lawsuit. All Plaintiffs are joined pursuant to Fed. R. Civ. P. 17(a) and 19(a).

5. Plaintiff Del Sound Music is a sole proprietorship owned by George Thorogood. This Plaintiff is the copyright owner of at least one of the songs in this matter.

6. Plaintiff MJ Publishing Trust is a Trust doing business as Mijac Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

7. Plaintiff Rio Bravo Music, Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

8. Plaintiff Sony/ATV Songs LLC is a limited liability company doing business as Sony/ATV Tree Publishing. This Plaintiff is the copyright owner of at least one of the songs in this matter.

9. Plaintiff Big Yellow Dog, LLC is a limited liability company doing business as Big Yellow Dog Music. This Plaintiff is the copyright owner of at least one of the songs in this matter.

10. Plaintiff Tokeco Tunes is a sole proprietorship owned by Toby Keith Covell.

This Plaintiff is the copyright owner of at least one of the songs in this matter.

11. Plaintiff Warner-Tamerlane Publishing Corp. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

12. Plaintiff Big Borassa Music LLC is a limited liability company. This Plaintiff is the copyright owner of at least one of the songs in this matter.

13. Plaintiff EMI Blackwood Music Inc. is a corporation. This Plaintiff is the copyright owner of at least one of the songs in this matter.

14. Plaintiff Indiana Angel Music is a sole proprietorship owned by Brantley Keith Gilbert. This Plaintiff is the copyright owner of at least one of the songs in this matter.

15. Defendant Hilburn Enterprises, Inc. is a corporation organized and existing under the laws of the state of Nebraska, which operates, maintains and controls an establishment known as Bourbon Jack's Honkytonk Bar, located at 212 W 2<sup>nd</sup> Street, Hastings, NE 68901, in this district (the "Establishment").

16. In connection with the operation of the Establishment, Defendant Hilburn Enterprises, Inc. publicly performs musical compositions and/or causes musical compositions to be publicly performed.

17. Defendant Hilburn Enterprises, Inc. has a direct financial interest in the Establishment.

18. Defendant Jack Hilburn also known as Jackie H. Hilburn is the President of Defendant Hilburn Enterprises, Inc. with responsibility for the operation and management of that corporation and the Establishment.

19. Defendant Jack Hilburn also known as Jackie H. Hilburn has the right and

ability to supervise the activities of Defendant Hilburn Enterprises, Inc. and a direct financial interest in that corporation and the Establishment.

### **CLAIMS OF COPYRIGHT INFRINGEMENT**

20. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 19.

21. Since February 2014, BMI has reached out to Defendants over seventy (70) times, by phone, mail and email, in an effort to educate Defendants as to their obligations under the Copyright Act with respect to the necessity of purchasing a license for the public performance of musical compositions in the BMI repertoire. Included in the letters were Cease and Desist Notices, providing Defendants with formal notice that they must immediately cease all use of BMI-licensed music in the Establishment.

22. Plaintiffs allege six (6) claims of willful copyright infringement, based upon Defendants' unauthorized public performance of musical compositions from the BMI Repertoire. All of the claims for copyright infringement joined in this Complaint are governed by the same legal rules and involve similar facts. Joinder of these claims will promote the convenient administration of justice and will avoid a multiplicity of separate, similar actions against Defendants.

23. Annexed to this Complaint as a schedule (the "Exhibit A") and incorporated herein is a list identifying some of the many musical compositions whose copyrights were infringed by Defendants. The Schedule contains information on the six (6) claims of copyright infringement at issue in this action. Each numbered claim has the following eight lines of information (all references to "Lines" are lines on the Schedule): Line 1 providing the claim number; Line 2 listing the title of the musical composition related to

that claim; Line 3 identifying the writer(s) of the musical composition; Line 4 identifying the publisher(s) of the musical composition and the plaintiff(s) in this action pursuing the claim at issue; Line 5 providing the date on which the copyright registration was issued for the musical composition; Line 6 indicating the copyright registration number(s) for the musical composition; Line 7 showing the date(s) of infringement; and Line 8 identifying the Establishment where the infringement occurred.

24. For each work identified on the Schedule, the person(s) named on Line 3 was the creator of that musical composition.

25. For each work identified on the Schedule, on or about the date(s) indicated on Line 5, the publisher(s) named on Line 4 (including any predecessors in interest), complied in all respects with the requirements of the Copyright Act and received from the Register of Copyrights Certificates of Registration bearing the number(s) listed on Line 6.

26. For each work identified on the Schedule, on the date(s) listed on Line 7, Plaintiff BMI was (and still is) the licensor of the public performance rights in the musical composition identified on Line 2. For each work identified on the Schedule, on the date(s) listed on Line 7, the Plaintiff(s) listed on Line 4 was (and still is) the owner of the copyright in the respective musical composition listed on Line 2.

27. For each work identified on the Schedule, on the date(s) listed on Line 7, Defendants publicly performed and/or caused to be publicly performed at the Establishment the musical composition identified on Line 2 without a license or permission to do so. Thus, Defendants have committed copyright infringement.

28. The specific acts of copyright infringement alleged in the Complaint, as well as Defendants' entire course of conduct, have caused and are causing Plaintiffs great

and incalculable damage. By continuing to provide unauthorized public performances of works in the BMI Repertoire at the Establishment, Defendants threaten to continue committing copyright infringement. Unless this Court restrains Defendants from committing further acts of copyright infringement, Plaintiffs will suffer irreparable injury for which they have no adequate remedy at law.

WHEREFORE, Plaintiffs pray that:

(I) Defendants, their agents, servants, employees, and all persons acting under their permission and authority, be enjoined and restrained from infringing, in any manner, the copyrighted musical compositions licensed by BMI, pursuant to 17 U.S.C. Section 502;

(II) Defendants be ordered to pay statutory damages, pursuant to 17 U.S.C. Section 504(c);

(III) Defendants be ordered to pay costs, including a reasonable attorney's fee, pursuant to 17 U.S.C. Section 505; and

(IV) Plaintiffs have such other and further relief as is just and equitable.

#### **PLACE OF TRIAL**

Plaintiffs request for trial in Omaha, Nebraska.

Dated this 6<sup>th</sup> day of March, 2017

BROADCAST MUSIC, INC., et al, Plaintiffs

By: /s/ Jill Robb Ackerman

Jill Robb Ackerman (NE #17623)

BAIRD HOLM LLP

1700 Farnam St

Suite 1500

Omaha, NE 68102-2068

Phone: 402-344-0500

Facsimile: 402-344-0588

jrackerman@bairdholm.com

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## *Schedule*

|        |                         |   |
|--------|-------------------------|---|
| Line 1 | Claim No.               | 1   |
| Line 2 | Musical Composition     | Bad To The Bone                                       |
| Line 3 | Writer(s)               | George Thorogood                                      |
| Line 4 | Publisher Plaintiff(s)  | George Thorogood, an individual d/b/a Del Sound Music |
| Line 5 | Date(s) of Registration | 11/30/81  |
| Line 6 | Registration No(s).     | PAu 363-194   |
| Line 7 | Date(s) of Infringement | 8/5/2016  |
| Line 8 | Place of Infringement   | Bourbon Jack's Honkytonk Bar                          |

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|--------|-------------------------|---------------------------------------|
| Line 1 | Claim No.               | 2                                     |
| Line 2 | Musical Composition     | Beat It                               |
| Line 3 | Writer(s)               | Michael Joe Jackson                   |
| Line 4 | Publisher Plaintiff(s)  | MJ Publishing Trust d/b/a Mijac Music |
| Line 5 | Date(s) of Registration | 11/16/82      12/27/82                |
| Line 6 | Registration No(s).     | PAu 456-334      PA 158-771           |
| Line 7 | Date(s) of Infringement | 11/10/2016                            |
| Line 8 | Place of Infringement   | Bourbon Jack's Honkytonk Bar          |

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|--------|-------------------------|------------------------------|
| Line 1 | Claim No.               | 3                            |
| Line 2 | Musical Composition     | Miss Rodeo a/k/a Rodeo       |
| Line 3 | Writer(s)               | Larry Bastian                |
| Line 4 | Publisher Plaintiff(s)  | Rio Bravo Music, Inc.        |
| Line 5 | Date(s) of Registration | 8/5/91                       |
| Line 6 | Registration No(s).     | PA 538-349                   |
| Line 7 | Date(s) of Infringement | 11/11/2016                   |
| Line 8 | Place of Infringement   | Bourbon Jack's Honkytonk Bar |

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|--------|-------------------------|--|
| Line 1 | Claim No.               | 4  |
| Line 2 | Musical Composition     | I Love This Bar  |
| Line 3 | Writer(s)               | Scott Emerick, Toby Keith  |
| Line 4 | Publisher Plaintiff(s)  | Sony/ATV Songs LLC d/b/a Sony/ATV Tree Publishing; Big Yellow Dog, LLC d/b/a Big Yellow Dog Music; Toby Keith Covell, an individual d/b/a Tokeco Tunes |
| Line 5 | Date(s) of Registration | 11/21/03   |
| Line 6 | Registration No(s).     | PA 1-203-072   |
| Line 7 | Date(s) of Infringement | 11/10/2016   |
| Line 8 | Place of Infringement   | Bourbon Jack's Honkytonk Bar   |

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|--------|-------------------------|--|
| Line 1 | Claim No.               | 5  |
| Line 2 | Musical Composition     | Kiss My Country Ass  |
| Line 3 | Writer(s)               | Jonathan Stone; Rhett Akins; Dallas Davidson                                       |
| Line 4 | Publisher Plaintiff(s)  | Warner-Tamerlane Publishing Corp.; Big Borassa Music LLC; EMI Blackwood Music Inc. |
| Line 5 | Date(s) of Registration | 8/8/05   |
| Line 6 | Registration No(s).     | PAu 2-973-694  |
| Line 7 | Date(s) of Infringement | 11/11/2016   |
| Line 8 | Place of Infringement   | Bourbon Jack's Honkytonk Bar   |

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|--------|-------------------------|--|
| Line 1 | Claim No.               | 6  |
| Line 2 | Musical Composition     | Live It Up   |
| Line 3 | Writer(s)               | Brantley Gilbert   |
| Line 4 | Publisher Plaintiff(s)  | Warner-Tamerlane Publishing Corp.; Brantley Keith Gilbert, an individual d/b/a Indiana Angel Music |
| Line 5 | Date(s) of Registration | 7/29/11  |
| Line 6 | Registration No(s).     | PA 1-750-920   |
| Line 7 | Date(s) of Infringement | 11/10/2016   |
| Line 8 | Place of Infringement   | Bourbon Jack's Honkytonk Bar   |

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